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No. 78-1335

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

VILLAGE OF SCHAUMBURG, *et al.*,
Petitioners,

v.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby moves for leave to file a brief amicus curiae in the above noted case in support of the position of the respondents. The respondents have consented to the filing of said brief; the petitioners have refused to do so.

INTEREST OF THE AFL-CIO

The AFL-CIO is a federation of 104 national and international unions having a total membership of approximately 13,750,000 working men and women. This case concerns the extent of state and local authority to regulate door-to-door methods of communication. As the Court noted in *Martin* v. *Struthers,* 319 U.S. 141, 146 "laboring groups

have used * * * this method of disseminating their doctrine * * * in recruiting their members." See also *Staub* v. *City of Baxley*, 355 U.S. 313. The question presented here is therefore of considerable moment to the AFL-CIO.

THE ISSUES TO BE COVERED IN THE AFL-CIO'S BRIEF

The brief which is sought to be filed will demonstrate that the challenged provision of petitioners' ordinance violates the First Amendment because the ordinance adversely affects the exercise of First Amendment rights, and because it cannot be justified on either of the theories advanced to support it. The provision does not serve any privacy interest of the residents of Schaumburg, because other provisions, not challenged herein, authorize each resident to post his premises against solicitation; nor can it be sustained as a regulation against fraudulent solicitations, because it classifies as expenses for non-charitable purposes items which do, in fact, advance the charitable purposes for which respondents and many other *bona fide* charitable organizations solicit funds.

CONCLUSION

For the above stated reasons this motion should be granted.

Respectfully submitted,
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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

ARGUMENT

(1). The District Court observed that respondent Citizens for a Better Environment ("CBE") "is an information-gathering and information-dissemination [group] * * * akin to a political action group using political action in its broadest sense." (A. 45-46.) CBE in futherance of its program engages in "door-to-door canvass[ing]" during which the undisputed evidence shows that:

> representatives distribute informative pamphlets on

> environmental subjects and on CBE activities, answer questions posed by residents, accept pollution complaints on a form provided for follow-up investigation and possible action by CBE, accept signatures to a statement of citizen's support to CBE's program, upon which thousands upon thousands of signatures have been collected, and accept contributions from such residents. [A. 41.][1]

At issue here is the constitutional validity of Schaumburg's scheme for licensing these activities of CBE.

(2). The First Amendment provides a large measure of protection to individuals and groups who spread a religious, political or social message door to door. This Court in *Martin* v. *Struthers*, 319 U.S. 141, 145-146, noted:

> The widespread use of [the door to door] method of communication by many groups espousing various causes attests its major importance. * * * Many of our most widely established religious organizations have used this method of disseminating their doctrines, and laboring groups have used it in recruiting their members. * * * Of course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the citizens in their homes. Door to door distribution of circulars is essential to the poorly financed causes of little people. [Footnotes omitted.]

[1] While petitioners assert that "there were controverted allegations as to the character of" CBE (Pet. Br. 34), they failed to controvert those allegations in the manner provided by Rule 56(e) of the Federal Rules of Civil Procedure. Accordingly, the District Court properly accepted as the facts those stated in the affidavits which CBE submitted in support of its motion for summary judgment (quoted in part above).

Accordingly:

> Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas. [*Id.* at 146-147.]

This statement of the central lesson of the law, and the course of decision from *Lovell* v. *Griffin*, 303 U.S. 444 through *Hynes* v. *Mayor of Oradell*, 425 U.S. 610, shows that there is "no absolute right under the Federal Constitution to * * * knock on a door for any purpose" (*id.* at 619). Laws placing limits on that right "*may* serve the[] important interests * * * [of] protecting citizens from crime and undue annoyance * * * without running afoul of the First Amendment." (*Id.* at 616-617; emphasis supplied.) But the recognition that regulation in this area "may" do so, does not mean that it invariably succeeds:

> "Adjustment of the inevitable conflict between free speech and other interests is a problem as persistent as it is perplexing," *Niemotko* v. *Maryland*, 340 U.S. 268, 275 (1951) (Frankfurter, J., concurring in result), and this Court has in several cases reviewed attempts by municipalities to regulate activities like canvassing and soliciting. Regulation in this area "must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly," *Thomas* v. *Collins*, 323 U.S. 516, 540-541 (1945.) [*Hynes*, 425 U.S. at 616.]

Recognizing the sensitivity of the problem, the Court has examined each regulatory scheme on its own terms. *Hynes* exemplifies this circumspect approach. The Court measured the ordinance there against the basic "test that in the First Amendment area 'government may regulate . . . only with narrow specificity' " (*id.* at 620), and concluded "that the ordinance is invalid because of vagueness" (*id.*). That being so the Court declined to reach "the other [more far-reaching] arguments appellants advance." (*Id.*) Here too, as we now show, the ordinance is so plainly constitutionally deficient "as to make it quite needless in this case to examine the periphery" (cf., *Kingsley Pictures Corp.* v. *Regents*, 360 U.S. 684, 689).

(3). Petitioners "emphasize[] at the outset that although Section 20(g) of Chapter 22 is the only provision of the Schaumburg ordinance at issue here, that section is but a part of a comprehensive method of regulating both commercial and charitable peddlers and solicitors". (Pet. Br. 12.) Although we are uncertain what lesson, if any, petitioners would draw from this circumstance, we agree that the challenged provision should not be viewed in isolation. Indeed, the conclusion reached by the Court of Appeals that Sec. 20(g) violates the First Amendment on its face is strongly reinforced when that provision is read in the light of Schaumburgs entire regulatory scheme. As petitioners state:

> The Village Code in Article II, Section 22-6 through 22-18 regulate the activities of for-profit peddlers and solicitors. Charitable solicitations are regulated by Article III, Sections 22-19 through 22-24. [Pet. Br. 12-13.]

We set out the essence of each Article in turn.

Article II—"Peddlers and Solicitors". Since petitioners fail to describe their regulation of the activities of "for profit" peddlers and solicitors (Article II), we must look elsewhere. That Article is set forth in full at pages A20-A25 of Respondents' Brief in Opposition.

Article II provides that "no person shall engage in the business of a peddler or solicitor within the village without first having obtained a license therefor as provided in this article".[2] (Sec. 22-7) A license can be obtained only on application to the village collector. The application calls for information regarding the identity of the applicant and his employer, "the kind of merchandise to be peddled or offered", "cities of previous solicitation", and, "whether such applicant has ever had a revocation of any peddler's or solicitor's licenses, whether he has ever been convicted for a violation of similar peddlers and solicitors ordinances, whether he has ever been arrested or convicted of a misdemeanor or felony, and if so, why". (Sec. 22-8) Upon request from the village collector the Chief of Police is directed to "make or cause to be made an investigation to determine the character and reputation of the applicant." (Sec. 22-9) It is expressly provided that "no license shall be issued to any applicant who is not found to be a person of good character and reputation or to any firm, corporation, partnership or association which is not represented in the village

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[2] "Peddler" is defined as "any person who, going from place to place, shall at retail sell, offer for sale, sell and deliver, barter or exchange any * * * article or thing whatsoever or any service from a vehicle or otherwise"; "Solicitor" is defined as "any person who, going from place to place, without prior appointment or prearrangement with the customer, shall take orders for future delivery at retail of any merchandise or other article or thing, or any service." (Sec. 22-6)

by a person found to be of good character and reputation". (*Id.*) The Chief of Police must certify to the village collector within 30 days of the application whether a permit shall be issued or denied. (*Id.*) A $10 annual fee is required for a peddler's or solicitor's license. (Sec. 22-10)[3]

It is declared to be "unlawful for any peddler or solicitor to cheat, deceive or fraudently misrepresent * * * while acting as a peddler or solicitor in the village or to barter, sell or peddle any goods, merchandise or wares other than those specified in his application for a license." (Sec. 22-12). Soliciting and peddling is forbidden before 9 a.m. or after 6 p.m. and on Sundays, except for vending of food from trucks on the public ways which is allowed "on all days between sun-up and sunset". (Sec. 22-15)

Occupants of dwelling units are instructed that they may post their dwelling units against solicitors and peddlers by a sign stating "NO SOLICITORS OR PEDDLERS INVITED." (Sec. 22-15). Solicitors and peddlers are directed "upon going onto any premises in the village upon which a residence as herein defined is located" to examine whether such a notice is attached, and if so, to "immediately and peacefully depart from the premises" (Sec. 22-16.) Solicitors and peddlers are also required to immediately and peacefully depart from any premises to which they have gained entrance when requested to do so by the occupant. (*Id.*)

Article III—"Charitable Organizations". Article III provides that "every charitable organization, which solicits

[3] The fee is $25 per vehicle if the peddler or solicitor uses a vehicle other than a private automobile. (*Id.*) The application must list the number of vehicles if any to be operated. (Sec. 22-8)

or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit". (Sec. 22-20) "Charitable organization" is defined as "any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes." (Sec. 22-19)

The application must identify the organization, the person in charge of solicitation and all persons who will solicit contributions in the village. It must set forth the dates, times and area where solicitation shall be conducted. (Sec. 22-20(a)-(d)) It requires also a "written statement of recent date by the Attorney General of Illinois that the organization has complied with" the Illinois charitable solicitation statute (Sec. 22-20(e)), and proof that the organization is tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. (Sec. 22-20(f)) Lastly, the application must contain "satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization" as "charitable purposes" is defined in the ordinance. A certified audit of the organization's last full year of operations or "other comparable evidence" must be submitted to "demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization." (Sec. 22-20(g)).

Applications are to be submitted to the village clerk who in turn shall submit them to the village board. If the village board finds and determines that all the requirements of Article III have been met "a permit shall be issued specifying the dates and times to which solicitation may take

place". (Sec. 22-21) Each application must be accompanied by a $10 fee. (Sec. 22-22) Persons who have been convicted of or who are under indictment for a felony may not be utilized as solicitors. (Sec. 22-23).

Permits shall not permit solicitation before 9 a.m. and after 6 p.m. or on Sunday. A solicitor is not permitted "to go upon any premises which has posted a sign indicating 'no solicitors or peddlers invited.'" (Sec. 22-24)

In describing Schaumburg's "comprehensive method" of regulation (Pet. Br. 15) petitioners fail to specify the consequences to a charitable organization if it is disqualified under Sec. 22-20(g) and/or the other requirements of Sec. 22-20. If Articles II and III are mutually exclusive, then Article III imposes a flat prohibition on "charitable organizations" which are unable to conform to those standards. But the court below observed that "the Village alleges that CBE, at least, can apply for a permit under the for-profit provisions" (Pet. A9, n. 6).[4] If so, then CBE, and any other charitable organization which fails to qualify under Sec. 22-20(g)—or under Sec. 22-20(e) or (f)—may apply under Article II. But availability of this potential avenue does not change the constitutional status of Sec. 22-20(g) because on that interpretation the effect of noncompliance is

[4] As that court also noted (*id.*) that interpretation is not readily reconciled with the language of Secs. 22-6 and 22-19 which respectively define coverage under Articles II and III. Although petitioners vigorously assert that "the ordinance in question is not unconstitutional because of vagueness" (Pet. Br. 24, heading) and accuse the Court of Appeals of "stretch[ing] to find some situations which may or may not arguably be covered by the ordinance" (*id.* 27), they do not address this question of interpretation in their brief to this Court.

to subject the organization to the Police Chief's discretionary determination regarding its solicitors' "good character and reputation" (Sec. 22-9). A scheme which licenses the exercise of First Amendment rights on such a discretionary judgment is plainly unconstitutional under *Schneider* v. *State*, 308 U.S. 147, 158; *Cantwell* v. *Connecticut*, 310 U.S. 296, 305-307; and *Hynes*, 425 U.S. at 617-618, 624.

On either view of the matter Sec. 22-20(g) constitutes a substantial interference with the exercise of First Amendment rights of organizations such as CBE. Thus the provision may survive constitutional scrutiny only if petitioners can establish "a subordinating interest which is compelling" (*Bates* v. *Little Rock*, 361 U.S. 516, 524). In attempting to sustain that burden, petitioners' argument interweaves reliance on two entirely distinct interests—the privacy of village residents, and protecting residents from fraud. We now show that petitioners have failed to justify this ordinance under either theory.

(4)(A). When Schaumburg's regulatory scheme is viewed in its totality, it becomes clear that Sec. 22-20(g) serves *no* privacy interest. The entire scheme permits a wide range of enterprises and organizations to raise money door to door where the resident has not posted the premises against such solicitation. There is no rational basis for believing that solicitors for charitable organizations which spend more than 25% of contributions for purposes other than those specified in Sec. 22-20(g) create a greater danger to the *privacy* of residents than do solicitors for charitable organizations which qualify under that provision, let alone brush salesmen, vendors of appliances, insurance salesmen and countless others who may obtain permits under Article II. Thus, the elimination of that subclass of potential solicitors

can be said to protect the privacy of homes only if *any* reduction of potential solicitors by some unknown number and proportion can be said to protect that interest. But that incidental effect—which would be served equally be eliminating all solicitors whose surname begins with the letter "A"—is altogether too attenuated to explain the purpose of Sec. 22-20(g), let alone pass muster under the First Amendment.

The provisions of Articles II and III which actually safeguard the "right of individuals to be left alone in the peaceful enjoyment of their homes" (Pet. Br. 19), are those which forbid solicitation on any premises where a sign is posted "no solicitors or peddlers invited." (Sec. 22-16[5]; Sec. 22-24. See also Sec. 22-15 prescribing a form of notice.) Schaumburg thereby protects privacy interests in precisely the manner contemplated by *Martin* v. *Struthers, supra,* 319 U.S. at 147-149. *Rowan* v. *Post Office Dept.,* 397 U.S. 728, 737, relied on at Pet. Br. 19, followed *Martin* on this very point. The Court there sustained an Act of Congress "under which a person may require that a mailer remove his name from its mailing lists and stop all future mailings to the householder" by establishing "a procedure whereby any householder may insulate himself from advertisements that offer for sale 'matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative.' " (397 U.S. at 729-730, quoting 39 U.S.C. § 4009 (a) (1964 ed., Supp. IV).)

[5] The balance of Sec. 22-16, which requires solicitors or peddlers to leave immediately when requested to do so has no counterpart in Article III, but such a requirement may be implicit in Sec. 22-24 and we have no doubt that the village could constitutionally impose it on any and all solicitors.

Sec. 4009(a) thus placed the protection of an individual's privacy just where it belongs, with that individual; even in regulating the mailing of such materials it did not impose a complete ban, which would have prevented willing recipients from receiving them. By safeguarding individual choice in this manner Congress accepted some cost to privacy interests because unwilling persons could not avoid receiving an initial mailing of offensive materials from a particular mailer; Secs. 22-16 and 22-24 are comparatively more efficient in protecting privacy because they enable residents to protect themselves against any and all solicitation. Given these provisions, it is sheer hyperbole for petitioners to argue that Sec. 22-20(g) operates to prevent "the invasion of a private home uninvited and at inappropriate hours" (Pet. Br. 22) or, for "the protection of the home owners from uninvited solicitors" (Pet. Br. 27). Since this is apparently not its purpose and is certainly not its effect, decision of this case requires no balancing of First Amendment and privacy interests.

(B). Petitioners, also assert that Sec. 22-20(g) is designed to protect residents of the village from fraud. That was the purpose of the ordinance which was sustained in *National Foundation* v. *Fort Worth,* 415 F.2d 41 (C.A. 5), cert. denied, 396 U.S. 1040 on which petitioners rely so heavily.[6] As petitioners note, the court in *National Foundation* quoted with approval the following passage from *Cantwell* v. *Connecticut,* 310 U.S. 296:

Without doubt a state may protect its citizens from

[6] The City of Fort Worth made no pretense in defending its ordinance that it was designed to serve any other purpose, such as privacy.

> fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. [310 U.S. at 306-307, quoted at 415 F.2d 46.]

We unhesitatingly accept this proposition. But to acknowledge the clear authority of state and local government to prevent frauds is only one step, as *Cantwell* demonstrates by example, in determining whether a particular law claimed to address that wrong is valid under the First Amendment. This Court has said:

> Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. [*New York Times* v. *Sullivan*, 376 U.S. 254, 269, footnotes omitted.]

Nor can "fraud" claim such "talismanic immunity." The *Cantwell* Court *struck down* a Connecticut statute which prohibited solicitation of "money, services, subscriptions or any valuable thing for any alleged religious, charitable, or philanthropic cause * * * without the approval of the Secretary of the Public Welfare Council" (310 U.S. at 301-302), on the ground that "as applied to prevent Jehovah's Witnesses from soliciting door to door", the statute "infringed upon the right to free exercise of religion, guaranteed by the First and Fourteenth Amendments" (*Hynes*, 425 U.S. at 617). As the Court of Appeals said here:

> The Village has a legitimate interest in protecting its citizens from fraud by solicitors who will use the funds collected for purposes other than those expressly or impliedly represented. It has a similar protection interest in identifying organizations where the salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture. The 75 percent requirement *might* be valid where solicitors represent themselves as mere conduits for contributions. But the requirement as it exists in the Village code also applies where it is made clear that the contributions will be used for reasonable salaries of those who will gather and disseminate information relevant to the organization's purpose. Thus the standard is not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The freedom of expression of organizations which do not present these problems is also infringed, either by absolute prohibition or the additional burden of the for-profit permit requirements. [Pet. A10-A11; emphasis is original.]

We cannot improve on this statement. But it does bear emphasis that Sec. 22-20(g) sets a totally arbitrary and unjustified standard for distinguishing "between solicitation for genuinely charitable purposes and those who would use the cloak of charity to mask their pursuit of commercial gain." (Pet. Br. 29.) Petitioner argues:

> When, as is apparently the case here, a majority of the funds are utilized not for the charitable purposes for which the organization was purportedly organized, but instead to compensate canvassers, officers, and employees, it must be concluded that what is involved is nothing more nor less than a commercial enterprise even

> though it be dressed in the trappings of a charitable or environmental purpose. [*Id.*] [7]

But the antithesis thus drawn is false: salaries and other "administrative expenses" as defined in Sec. 22-20(g) are not incompatible with "the charitable purposes for which the organization was purportedly organized", but may be essential for accomplishing those purposes. This will be true of any organization which performs through its own officers, employees and staff the cha ble or other non-profit functions for which it is organized and for which it solicits funds, be they research, lobbying, raising citizen awareness of public affairs, educating students, etc. A community college, for example, would fail to qualify under Sec. 22-20(g) because the money it raised would largely go for the payment of faculty salaries, rent, telephone, and the like. Sec. 22-20(g) is a totally inadequate method for distinguishing between fraudulent and non-fraudulent organizations which solicit funds for charitable purposes because it is totally unrelated to the true nature of the actual operations of such organizations. In the very case on which petitioners have so heavily relied, the Fifth Circuit recognized that

> A fixed percentage limitation on the costs of solicitation might be undesireable and inapplicable if applied to all types of charitable organizations. [*National Foundation, supra,* 415 F.2d at 46.]

So, too, in holding that a similar 25% "cost-of-solicitation

[7] We note that although petitioners here refer to a "majority of the funds" although the ordinance disqualifies organizations which spend more than 25% of their funds for salaries and administrative purposes.

rule" was "overly broad" the District Court in *Carolina Action* v. *Pickard,* 465 F.Supp. 576 (W.D.N.C.) observed that:

> It stultifies protected speech, as it makes the ability to engage in neighborhood canvassing-solicitation dependent on a showing that plaintiff's representatives and ideas will be sufficiently popular to obtain at least $3 in contributions above every $1 expended in the canvass. Such a requirement is likely to operate most seriously to the detriment of those organizations espousing unusual or unpopular views and therefore most urgently in need of protection from encroachments on their First Amendment rights. It is the unpopular or unusual organizations whose survival may depend on being able to conduct the type of integrated campaign utilized by plaintiff. The imposition of a 25% cost-of-solicitation limitation, without providing relief for organizations that can demonstrate their bona fides and good reason for being relieved of the percentage limitation, ultimately and unlawfully serves, as it might have here, to make the right to engage in neighborhood canvassing depend on the content of the canvassers' message rather than on the legitimate interest of the community in the character of the canvassers. See *Hynes, supra* at 617, *accord, Citizens for a Better Environment* v. *Schaumburg,* 590 F.2d 220 (7th Cir. 1978). [465 F.Supp. at 581.]

That court also ruled:

> Defendants' refusal to attribute any of plaintiff's canvassers' salaries to non-solicitation functions on the ground that plaintiff's solicitation, organizational, and informational activities occur at the same time, is not compelled by § 2-30 in the face of undisputed evidence that these activities are combined because of plaintiff's precarious financial position. Under defendants' inter-

> pretation of the language of § 2-30, the "cost of raising the funds" grows in direct proportion to the need of the applicant to integrate its public contact activities; the more efficient it attempts to be, the more likely it will be denied a permit under the presumed authority of § 2-30. [Id. at 581-582.]

Indeed, any organization which combines the spreading of its message with solicitation of membership or contributions will inevitably run afoul of Sec. 22-20(g) because, as is true of the plaintiffs herein and in *Carolina Action*, the "informational and solicitation aspects of the[ir] house-to-house canvass * * * are interdependent" (*Carolina Action*, 465 F.Supp. at 579). (Compare *Cantwell*, 310 U.S. at 301; *Murdock* v. *Pennsylvania*, 319 U.S. 104, 106-107; *Thomas* v. *Collins*, 323 U.S. 516, 533-537.)

Schaumburg's lack of care in formulating the standards for distinguishing between "charitable organizations" which may be licensed as such, and those which may not, is further evidenced by the requirement of Sec. 22-20(f) that applying organizations must be proven to be tax exempt under Sec. 501(c)(3) of the Internal Revenue Code. Thus, under petitioners' "fraud" theory, all organizations which fall under Sec. 501(c)(4) or (5) of the Code are treated as if they constitute "a commercial or even fraudulent enterprise" (Pet. Br. 30). It is also instructive that while Sec. 501(c)(3) provides tax exemption for entities which are "organized and operated exclusively for religious, charitable, scientific * * * or educational purposes * * *", neither Congress nor the Internal Revenue Service deems the payment of salaries to solicitors or other employees as establishing that the entity is not being operated "exclusively"

for its avowed purpose.[8] Since Congress and the Internal Revenue Service have a substantial stake in preventing organizations from obtaining tax exemption unless they are legitimately not organized for profit, it is difficult to see why the village does not deem it adequate protection of its residents from fraud to require that organizations which solicit funds be qualified as exempt under the Internal Revenue Code.

The short of the matter is that although Sec. 22-20(g) provides that certain expenditures "shall not be deemed to be used for the charitable purposes of the organization", such expenditures are in fact used for such purposes by many types of charitable organizations, as this record illustrates. Although the Court of Appeals' decision turned on this point, petitioners have failed to make any showing that Sec. 22-20(g) accurately differentiates between organizations which do use 75% of their proceeds "directly for the charitable purpose of the organization" and those which do not.

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[8] Indeed, although Sec. 501(c)(3) also requires that "no part of the net earnings of [such entity] inures to the benefit of any private shareholder or individual", the Internal Revenue Service has ruled with respect to a school which claim exemption thereunder that the payment of "reasonable compensation for their services" to the former owners of the school (which had been operated for profit) is consistent with Sec. 501(c)(3). [Rev. Rul. 76-441, 2 C.B. 147 (1976-2).]

CONCLUSION

For the foregoing reasons the judgment of the Court of Appeals should be affirmed.

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